Total Property Services, Inc. and Total Property Services of New England, Inc. and National Interior Contractors, Inc. and Peter M. Daigle, d/b/a Total Property Services, Inc. and James T. Lawson, d/b/a Total Property Services, Inc. *and* Carpenters Local No. 33, United Brotherhood of Carpenters & Joiners of America. Case 1–CA–27908

June 27, 1995

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On September 16, 1994, Administrative Law Judge Michael O. Miller issued the attached supplemental decision. The Respondent filed exceptions and a brief and the General Counsel filed an answering brief and cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In agreeing with the judge that personal liability should not be imposed on Peter M. Daigle, we rely solely on his finding that the record evidence fails to establish that Daigle, unlike James T. Lawson, was personally involved in the ongoing operation of the supposedly defunct Total Property Services, Inc. (TPS).

Member Browning would hold Peter Daigle personally liable in addition to James C. Lawson. Although the record does not disclose that Daigle was openly involved in the operation of TPS after the dissolution of its corporate form, Daigle was the president of both TPSNE and National Interior Contractors, Inc. (NIC), which the judge has found were single employers with TPS. In his capacity as a principal officer of each of the three entities, Daigle like Lawson, manipulated the corporations and ignored their separate identities for his own personal gain and to the detriment of the employees. Member Browning joins her colleagues in declining to rely on the judge's finding that holding Daigle liable is not necessary to make the employees whole.

[2] We find no merit in the Respondent's contention that the backpay specification ''goes beyond the time set forth in the order of the Board.'' The make-whole provision of the Order did not give specific dates, but referred to work performed ''*in or about* October and November 1990'' on the construction site at which the Respondent had unlawfully failed to apply the contract. This is broad enough to encompass the backpay specification's provision for backpay and fringe benefit contributions through December 29, 1990.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Total Property Services, Inc., Total Property Services of New England, Inc., National Interior Contractors, Inc., and James T. Lawson, d/b/a Total Property Services, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Robert DeBonis, Esq., for the General Counsel.
James T. Lawson, pro se.
Peter M. Daigle, pro se.

SUPPLEMENTAL DECISION—BACKPAY

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This matter was heard in Boston, Massachusetts, on June 27, 1994, based on a compliance specification issued by the Regional Director for Region 1 of the National Labor Relations Board (the Board) on January 31, 1994, as amended on April 7, 1994, and at hearing and answers filed on June 8, 1994, by Peter M. Daigle (Daigle), James T. Lawson,[1] (Lawson) and National Interior Contractors, Inc. (NIC).[2]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel, Lawson, Daigle, and NIC,[3] I make the following

FINDINGS OF FACT

I. THE UNDERLYING CASE—BACKGROUND

On April 30, 1992, the Board issued its Decision and Order in the underlying case,[4] finding that Respondent Total Property Services, Inc. (TPS) and Total Property Services of

[1] Lawson acted as counsel throughout this proceeding.

[2] Additionally, Total Property Services, Inc. will be referred to herein as TPS and Total Property Services of New England, Inc. will be referred to as TPSNE. Jointly all of these entities will be referred to herein as the Respondent.

[3] The General Counsel has moved to strike Respondent's briefs for failure to certify that copies were served on all parties and because they were postmarked on the date they were due. As to the first ground, I find that a proper certification was enclosed with the briefs submitted to me. The second ground is technically meritorious as the Respondent apparently did not mail those briefs until the day on which they were due, August 23, 1994. See NLRB Rules and Regulations, Sec. 102.111(b). However, as I had already read those briefs before receipt of this motion on September 6, 1994, I find that I cannot entirely disregard them. In any event, they essentially reiterate arguments previously raised by Respondent in its motion to dismiss, its affirmative defenses and at hearing so that the General Counsel is not prejudiced by my consideration of them. Accordingly, the motion to strike is denied. See *Postal Service*, 309 NLRB 305 (1992). Lawson and Daigle also submitted what was purported to be ''rebuttal'' briefs. As there is no provision for such briefs under the Board's Regulations, I have neither read nor considered those submissions and strike them.

[4] 307 NLRB No. 60 (not reported in Board volumes).

New England, Inc. (TPSNE)[5] had violated Section 8(a)(5) and (1) of the Act by failing and refusing to abide by and apply a collective-bargaining agreement to which it was bound to employees working on a construction project in Boston, Massachusetts, in or about October and November 1990. It ordered these entities, whom it found to constitute a single-integrated business enterprise and a single employer within the meaning of the Act, to ''make whole all employees for any loss of earnings resulting from Respondent's conduct . . . with additional amounts to be paid into the employees' benefit funds.'' This Decision and Order issued on the General Counsel's Motion for Summary Judgment filed when the Respondent failed to answer the complaint which, the Board found, had been properly served on it, and failed to respond to the Board's Notice to Show Cause why the General Counsel's motion should not be granted.

The Board's Order was enforced by a judgment of the United Stated Court of Appeals for the First Circuit, entered on October 27, 1992. This judgment, unpublished, was similarly issued on a motion for summary entry of judgment.

II. THE ISSUES

At the hearing, counsel for the General Counsel moved to strike Respondent's answers to paragraphs 9 through 15 of the specification, under Section 102.56 of the Board's Rules and Regulations, inasmuch as those answers failed to specifically admit or deny those allegations or assert a lack of knowledge as to them, as required by that section.[6]

Paragraph 9 alleges that the backpay period commenced around October 14 and terminated around December 29, 1990, ''the period during which Respondent TPS/TPSNE performed carpentry work at its Athletes Foot Store job located in Fanueil Hall, in Boston, Massachusetts.'' Respondent's answers denied that allegation ''as the pleading don't [sic] conform to the Order of the Board . . . nor . . . to the Judgment issued by the United States Court of Appeals.'' Inasmuch as Respondent's answers appeared to deny service at virtually every stage of the underlying case, contended that both the Board and the court's Orders were invalid because of a misidentification of the employer and the jobsite, and denied the existence of TPS and TPSNE, the motion to strike this paragraph was denied.

Paragraphs 10 through 15 of the specification allege a reasonable formula for determining the gross and net backpay due the unit employees and the amounts due under that formula (par. 10 and app. I), the backpay period for contributions to the benefit funds (par. 11), the benefit funds to which Respondents were obligated to make contributions, the due dates for benefit fund payments and a reasonable formula for calculating Respondent's obligations to those funds (par. 12), Respondent's failure to make those payments (par. 13), the amounts of fringe benefit contributions to which Respondent was obligated (par. 14 and app. II), and a summary of the Respondent's obligations to the employees and the fringe benefit funds (par. 15).

Respondent ''[n]either admitted or denied'' the allegations of paragraphs 10 through 15. It contended, contrary to the Regulations (Sec. 102.56(b) and (c)) and applicable precedent, that those issues ''were subject to testimony of the party requesting'' those wages or payments.

Respondent, although fully and carefully apprised of its obligations and the requirements of the Rules, misperceived or ignored those requirements. Its answers ''neither admit nor deny,'' fail to state a valid basis for any disagreements or offer any alternative computations. Accordingly, my ruling, granting the motion to strike Respondent's answers, is specifically reaffirmed and I find that these allegations stand as admitted to be true, requiring no affirmative evidence.[7] These allegations, now matters of fact on which the backpay is based, are set forth in detail in the specification, as amended and its appendices, are incorporated herein by reference and need not be replicated in the body of this decision.

Remaining at issue are the following questions:

(1) Whether Respondent was properly served in the underlying proceeding?

(2) Whether the complaint, Board Order, and court judgment fail to properly identify the Respondent?

(3) Whether the misidentification of the jobsite renders the Board's Order and the court's judgment unenforceable?

(4) Whether NIC is a single employer with TPS/TPSNE?

(5) Whether it is appropriate to hold the individuals, Daigle and Lawson, jointly and severally liable with TPS, TPSNE, and NIC?

III. DISCUSSION AND ANALYSIS

A. *Service*

The Board found that TPS and TPSNE, a single employer, had been properly served with copies of the charges, complaints, and notices of hearing. In view of the fact that the Order had issued on a Motion for Summary Judgment and noting Respondent's other positions regarding the corporate identities,[8] however, I permitted this issue to be raised. Respondent bears the burden of proof in support of its affirmative defenses but adduced no evidence in regard to the service issue. The General Counsel produced the original files containing proof that service had been made at every stage

[5] TPS and TPSNE, Massachusetts and Delaware corporations respectively, are general contractors engaged in the building and construction industry, constructing commercial facilities and are engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

[6] Sec. 102.56(b) provides, in relevant part, that ''respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.'' General denials of matters within respondent's knowledge are deemed insufficient. ''[I]f the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based,'' he is required to state the basis for that disagreement and set forth his position in detail, with appropriate supporting figures. Sec. 102.56(c) provides that failure to answer as required by subsec. (b) requires that the ''allegation shall be deemed to be admitted to be true and may be so found by the Board without the taking of evidence supporting such allegation.''

[7] *Ornamental Iron Works Co*., 307 NLRB 20 (1992); *Aquatech, Inc*., 306 NLRB 975 (1991); *Meilman Food Industries*, 255 NLRB 70 (1981).

[8] Respondent raised this argument as poorly worded and somewhat incomprehensible affirmative defenses. If this contention is based on the argument that Respondent's entities were improperly named, the issue is resolved in subsec. (2) hereof. If Respondent intended to argue that sufficiently related additional parties could not be added at the compliance stage, it is simply in error. *Southeastern Envelope Co*., 246 NLRB 423 (1979).

of the proceeding, either by registered mail or by personal service. Included therein was a letter from an attorney for TPSNE, dated February 21, 1991, referencing the complaint and notice of hearing.

To the extent that this issue is properly before me, I find that there has been no failure of service in the underlying case.

B. *Identification of the Respondent–Continued Existence of TPS*

Both the Board's Order and the court's judgment identify the Respondent as ''Total Property Services, Inc. and Total Property Services of New England, Inc.'' It appears, from documents on file in the office of the Massachusetts secretary of state that the correct legal names are ''TPS/Total Property Services, Inc.'' and ''TPSNE/Total Property Services of New England, Inc.'' Based thereon, Respondent argues that there ''is no such company called Total Property Services, Inc. or Total Property Services of New England'' and that they were, therefore, improperly named in the Board's Order. Implicit in this contention is the argument that this deviation from the registered names of the corporations renders the Board's Order somehow deficient.

Respondent's contention is totally without merit. This insignificant and inadvertent error caused neither confusion nor prejudice. It was clear, at all times, to whom the charges, complaints, and orders were directed.

Moreover, Respondent held themselves out as ''Total Property Services'' and ''Total Property Services of New England'' without the redundant or formal prefix of the corporate initials. Daigle signed the Union's acceptance of agreement on behalf of ''Total Property Services, Inc.,'' the statewide agreement was initially signed with the Employer named as ''Total Property Services, Inc. of New England,'' the balance sheets and other supporting financial documents which Respondent submitted to the Small Business Administration identify it as ''Total Property Service, Inc.'' and Dun & Bradstreet so lists it.

Under the circumstances described above, the General Counsel had no reason or need to search the records of the Commonwealth's secretary of state to determine the precise names of the entities which made up the single employer-respondent. Respondent knew that it was charged with the violations, knew that a complaint had issued against it, knew that it had been found in violation by the Board on its failure to respond, and knew that the court had enforced the Board's Order. Further, it knew that a compliance specification and notice of hearing had issued and Daigle, Lawson, and NIC responded thereto. I find no fatal defect in the failure of the Board or the court to identify the Respondent by the technically precise names under which its components was registered.

Included among the General Counsel's exhibits was a form, dated June 23, 1994, from the Massachusetts office of the secretary of state certifying that TPS/Total Property Services, Inc., which had been incorporated on January 1, 1986, had been dissolved on December 31, 1990. This purported dissolution is in direct conflict with the remainder of the record establishing that TPS continued in existence, and in business, long after the end of 1990.

Thus, the record contains balance sheets, profit-and-loss statements, and other financial data submitted by TPS to the Small Business Administration (SBA) for the years ending June 30, 1991, 1992, and 1993. These all show significant business activity during those years. Within SBA files is an offer by TPS, in response to a solicitation for bids, to perform work at Elgin Air Force base in Florida, dated August 19, 1993. It is signed by Lawson as TPS' president. In that offer, TPS is shown as having a Providence, Rhode Island address. SBA also received a letter from Lawson on behalf of TPS, dated September 14, 1993, asserting that entity's responsibility as a contractor. Respondent's sole exhibit is a certificate of change of directors or officers filed by Lawson on May 16, 1991. That certificate purports to indicate that Lawson had resigned as a corporate officer, director, and stockholder of TPS/Total Property Services, Inc., effective February 5, 1987, but had failed to file an earlier and more timely certificate of change.

From this record, one cannot determine whether TPS changed its state of incorporation or continued in business after 1990 as a sole proprietorship or partnership while continuing to hold itself out as a corporation. What is clear is that TPS continued in business, albeit with some changes in its address, and that Lawson continued an active role in running that business.

C. *Misidentification of the Jobsite*

When Robert Marshall, field representative of Carpenters Local No. 33, United Brotherhood of Carpenters and Joiners of America (the Union), visited the Fanueil Hall Marketplace in Boston in about October or November 1990, he observed a construction project on what was obviously going to be a sneaker/shoe store. He asked to speak to whomever was in charge and questioned the person who came forward as to the identity of the general contractor and the drywall subcontractor. He was told that the general contractor was Total Property Service of New England and that the subcontractor was a nonunion drywall contractor. Marshall stated that Total Property Service had a union contract and was told that TPS did but that TPSNE did not. In the course of the conversation, he was lead to believe that the store would be occupied by Reebok; he may have asked the person he spoke with if it was to be a sneaker store, ''like a Reebok store.'' If he did, he was not corrected or contradicted. Marshall then called Respondent's office and had a similar conversation with Lawson. Lawson denied that TPSNE had a collective-bargaining agreement and challenged Marshall to find a link between TPS and TPSNE.

When Marshall filed an unfair labor practice charge and submitted an affidavit to the Board, he referred to the site as a ''Reebok'' store. In fact, as he subsequently learned, the site was to be occupied by the Athlete's Foot chain of athletic footwear stores.

There was only one other construction project under way in the Fanueil Hall Marketplace when Marshall visited there. That project did not involve either a shoe store or the Respondent.

Marshall's mistake was perpetuated in the General Counsel's complaint and in the Board's Order, both of which identified the work as to which Respondent failed to apply the contract as ''the Reebok store located at the Fanueil Hall Marketplace.'' The mistake was similarly perpetuated in the court's judgment, enforcing the Board's Order.

At hearing, Respondent acknowledged that ''there's no denying that the company called TPSNE/Total Property Services of New England had a contract with Athlete's Foot.'' It now contends, however, that this error precludes the finding of any liability or the award of backpay against Respondent. This is a valiant but unavailing effort to avoid responsibility.

There is no confusion or prejudice to be found in this inadvertent error. The worksite was described as a sneaker-type store in the Fanueil Hall Marketplace, underway in the fourth quarter of 1990. Respondent knew what work it was performing at that location and in that period of time. That work involved the construction of a sneaker store, albeit for Athlete's Foot, not Reebok. Respondent could have come forward with this defense, if that is what it is, in response to the charge or the complaint, denying that they performed the work in question. It failed to do so, perhaps thinking that this error would enable it to avoid its contractual responsibility. I cannot find that such a minor and unprejudicial error, untimely raised, which would have been corrected by a routine motion to conform the pleading to the proof if the matter had gone to hearing, is sufficient to bar the relief to which the employees and the Union are entitled.

D. *Single Employer*

As previously noted, the Board found that TPS and TPSNE constituted a single-integrated business enterprise and a single employer within the meaning of the Act. The court enforced the Board's Order and that conclusion is not subject to question herein. The compliance specification alleges that NIC is a business enterprise affiliated with TPS and TPSNE, sharing common officers, ownership, directors, management, and supervision, with a commonly formulated and administered labor policy, sharing common premises, equipment and facilities, providing services to one another, interchanging employees and holding themselves out to the public as a single-integrated enterprise. Respondent denied this allegation and the burden of proof is on the General Counsel. *Beech Branch Coal Co*., 269 NLRB 536, 537 (1984). Respondent offered no evidence.

As the Board stated in *Hydrolines, Inc*., 305 NLRB 416, 417 (1991):

> The Board applies four criteria in determining whether separate entities constitute a single employer. These criteria are: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. No one of these four criteria is controlling nor need all be present to warrant a single-employer finding. The Board has stressed that the first three criteria are more critical than common ownership, with particular emphasis on whether control of labor relations is centralized, as these tend to show ''operational integration.'' . . . ''[S]ingle employer status depends on all the circumstances and is characterized by an absence of an 'arm's length relationship found among unintegrated companies.''' [Citations and footnotes omitted.]

At its incorporation, Daigle was president and a director of TPS; Lawson was its treasurer and a director. Daigle continued to identify himself as TPS' president through at least 1989. Both Daigle and Lawson directed the work of the unit employees at the Athlete's Foot store site and at other jobsites on behalf of the TPS/TPSNE single-employer entity in the fall of 1990. Notwithstanding Lawson's purported cessation of any role as officer, director, or stockholder in TPS in 1987 (according to the late-filed change form), Lawson bid on a job for TPS in August 1993, listing himself as its president and referred to himself as TPS in a letter to the SBA in September 1993. He similarly identified himself as TPS' president to Dun and Bradstreet in January 1994.

In October 1990, Daigle identified himself as the president of TPSNE, in a letter authorizing John Daigle to negotiate with another union. Daigle is similarly listed as president on the Foreign Corporation Certificate on file with the Commonwealth of Massachusetts; Lawson is listed as its treasurer and clerk. On a letter to the Postal Service regarding a bid, dated May 8, 1991, and on the contractor qualification form submitted to SBA in May 1992, Lawson is identified as the vice president; he is similarly identified in a September 14, 1993 letter to SBA.

NIC was incorporated in mid-December 1990, just prior to TPS' purported dissolution. Its articles of incorporation list Daigle as president and Daigle and members of his family as the only officers and directors. Daigle claimed to be the sole owner in a June 1992 application for SBA determination. In February 1993, however, Daigle identified Lawson to a government contracting officer as the project manager and as a co-owner and ''silent partner'' in NIC; Lawson had similarly identified himself to a contracting officer in August 1992.

NIC is engaged in the same business as TPS and TPSNE, general contracting in the construction and renovation of commercial and other facilities. It utilized the same employees, with those employees receiving their pay from TPS or TPSNE at some points and NIC at others with no explanations or breaks in their employment. Regardless of what company was paying them, those employees reported to the same offices and the same people oversaw their work, Lawson and Daigle. NIC also shared vehicles and equipment with TPS.

Christopher Murphy was one of the employees working on both the Athlete's Foot store jobsite and a continuing project at the McCormack Federal Building located a few minutes walk from Fanueil Hall. In the fall of 1990, his paychecks came from TPS. At some point toward the end of the year, they began to originate from NIC. The employees were aware of the different corporate names but not of any distinctions between them.

In late 1991, a government contracting officer questioned why, on a TPSNE job, TPSNE was not submitting payroll records but NIC was. Lawson replied, explaining that NIC was a ''corporation that TPSNE has recently become affiliated with.'' In other correspondence, an individual was identified as an employee of NIC with a copy of a paycheck to him from NIC. That employees' business card was also enclosed; it showed him to be an employee of TPSNE. Similarly, requests for solicitation documents submitted by TPSNE in May 1991 were accompanied by checks drawn on NIC. The checks were signed by Lawson.

The June 30, 1993 Dun & Bradstreet reports list Lawson as president of TPS and Daigle as NIC's president. Beyond that, the reports are virtually identical. They report the same

dollar volume of sales, the same net worth and identical fiscal statements, *to the dollar*. They also reflect that, while different addresses are listed, they share a common mailbox. While Respondent objected to the receipt of these reports, procured through the Westlaw database, it offered no evidence to refute their accuracy after those objections were overruled.

I am not sure what games, if any, Daigle and Lawson were attempting to play with their various and shifting business entities beyond a patent effort to avoid their union-contract responsibilities. I am sure, however, that the single-employer entity which had included both TPS and TPSNE has continued to exist under one or both names and that both Daigle and Lawson continue to be the principals of that employing entity. I am also convinced that NIC is a further extension of that entity, sufficiently closely related to TPS/TPSNE to have derivative liability imposed on it. *Coast Delivery Service*, 198 NLRB 1026, 1027 (1972). See also *Southeastern Envelope*, 246 NLRB 423 (1979). NIC was apparently created to supplant the dissolved corporate entity known as TPS, it continued to pay the TPS employees, it is owned and managed by the same individuals as TPS and TPSNE, it performs the same work, with the same customer base, and the same employees, tools, and other equipment. NIC and TPSNE, at least, are interchangeable, with NIC meeting TPSNE's payroll and providing funds for its requests for solicitation documents.

The record establishes that Daigle and Lawson determine and administer all labor relations policy for the various entities and there is no evidence that there is anyone else in the hierarchies of TPS, TPSNE, or NIC to do so.

Having found that NIC is a single employer with TPS/TPSNE, the inclusion of that entity as a named respondent at this stage of the litigation raises no statute of limitations or service issues. *Southeastern Envelope*, supra.

Given the foregoing evidence, and the absence of any contrary proof, I am compelled to find that NIC, TPS, and TPSNE constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

IV. INDIVIDUAL LIABILITY

The General Counsel further urges that individual liability be imposed on Daigle and Lawson because these individuals continued to operate TPS after its corporate structure was dissolved and because of a pattern by them of manipulating their corporate entities so as to avoid contractual and financial obligations. In *Greater Kansas City Roofing*, 305 NLRB 720 (1991), the Board reiterated its standards for piercing the corporate veil:

> Section 10(c) of the Act empowers the Board with broad authority to fashion appropriate remedies to meet the needs of a particular situation so that ''the victims of discrimination may be treated fairly.'' *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941). As a policy matter, the task for the Board is to determine the proper balance of the legal rights involved. When the incentive value of limited liability . . . is outweighed by the competing value of basic fairness to parties dealing with a corporation, the Board should look past that corporation's formal existence and hold controlling individuals liable for ''corporate'' obligations. *Labadie Coal Co. v. Black*, 672 F.2d 92 (D.C. Cir. 1982).

The General Counsel argues that the piercing of the corporate veil is warranted where, as here, individuals continue to operate as if a dissolved corporation were still in existence. *Urban Laboratories*, 308 NLRB 816 (1992), so holds. Respondent opposes the imposition of such liability to Lawson (and inferentially to Daigle, although the identical briefs submitted on their behalf fails to make that distinction), arguing only that ''The General Counsel failed to presented [sic] evidence through witnesses, affidavits and/or documents that the Respondent Lawson was an individual liable for the debt of another.''

Contrary to Respondent's claim, the General Counsel has produced ample evidence to support individual liability, at least as to Lawson. Thus, Lawson was an officer and director of TPS at its inception; he purportedly ceased to occupy those positions in 1987 but failed to timely notify the Commonwealth of Massachusetts of that fact. After TPS' corporate dissolution in that Commonwealth, Lawson held himself out as the president of an ongoing business known as TPS. Moreover, while Lawson does not appear to have any corporate role or ownership position in NIC, according to the records of that corporation, both he and Daigle acknowledged that Lawson was a ''silent partner'' in NIC, with both an ownership interest and a management role. I find that the foregoing is sufficient to hold Lawson individually liable, as an alter ego of both TPS and NIC, in the overriding interest of ensuring that the individuals denied their contractual benefits will achieve the remedy properly due them.

I do not find the same level of proof, or necessity, with respect to Daigle. Daigle remains the president of both TPSNE and NIC, which are ongoing business enterprises. There is no evidence that he was involved in the ongoing operation of the supposedly defunct TPS. Moreover, the liability of TPSNE and NIC, as part of the single employer entity, taken together with Lawson's individual liability, is sufficient to fairly ensure that the employees will receive the remedial sums which are due them, without extending personal liability to Daigle.

Based on all of the foregoing, I find and conclude that the discriminatees and union benefit funds suffered losses in the following amounts, as set forth in greater detail in the amended backpay specification, as a result of Respondent's failure to abide by and apply its collective-bargaining agreement to its employees who were employed at the Athlete's Foot store construction site in the Fanueil Hall Marketplace in Boston, Massachusetts, in October, November, and December 1990:

Net Wages Owing to Employees:	
Joseph DiMarzio	$3149.34
Christopher Murphy	3149.34
Scott Braccia	3801.92
Robin Littlejohn	3801.92
Mark Righini	721.44
Francis Newell	334.00
Total Net Wages Owing	**$14,957.97**
Net Fringe Benefit Contributions Owing to the Funds:	

Health and Welfare Fund	$4283.76
Pension Fund	2965.68
Annuity Fund	4530.90
Boston Carpenters Apprenticeship and Training Fund	158.68
Massachusetts Carpenters Training Program	329.52
Total Net Fringe Benefits Owing	**$12,268.54**

I further find that TPS/Total Property Services, Inc., TPSNE/Total Property Services of New England, Inc.,[9] National Interior Contractors, Inc., and James T. Lawson, d/b/a Total Property Services, Inc. are jointly and severally liable for the sums owed pursuant to this recommended Order.

[9] The separate entities are designated at this juncture by their correct legal names, as they were shown on their articles of incorporation.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, TPS/Total Property Services, Inc., TPSNE/Total Property Services of New England, Inc.,[11] National Interior Contractors, Inc., and James T. Lawson, d/b/a Total Property Services, Inc., shall make the employees and the fringe benefit funds named above whole by the payment of the sums set opposite their names, plus interest as set forth in the remedy section of the Board's underlying Decision and Order.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] See fn. 9, supra.